



झारखण्ड गजट

असाधारण अंक

झारखण्ड सरकार द्वारा प्रकाशित

21 माघ, 1943 (श०)

संख्या - 45 राँची, गुरुवार,

10 फरवरी, 2022 (ई०)

मंत्रिमंडल (निर्वाचन) विभाग

अधिसूचना

9 फरवरी, 2022

संख्या-02/निर्वाचन-वा०-16-03/17/01--भारत निर्वाचन आयोग की अधिसूचना संख्या-82/झार.-वि.स./(05/2015)/2022 दिनांक-18 जनवरी, 2022 द्वारा निर्वाचन अर्जी सं०-05/2015 में दिये गये उच्च न्यायालय, झारखण्ड, राँची की तारीख 20 दिसम्बर, 2021 के आदेश से संबंधित अधिसूचना को राजकीय गजट के असाधारण अंक में प्रकाशनार्थ ।

झारखण्ड राज्यपाल के आदेश से,

के० रवि कुमार,
मुख्य निर्वाचन पदाधिकारी-सह सचिव ।

भारत निर्वाचन आयोग

अधिसूचना

18 जनवरी, 2022 / 28 पौष, 1943 (शक)

संख्या- 82/झार.-वि.स./(05/2015)--2022 : लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में, निर्वाचन आयोग एतदद्वारा निर्वाचन अर्जी सं० 05/2015 में दिये गये उच्च न्यायालय, झारखण्ड, रांची के तारीख 20 दिसम्बर, 2021 के आदेश को प्रकाशित करता है ।

आदेश से,

अरविन्द आनंद,
प्रधान सचिव
भारत निर्वाचन आयोग

IN THE HIGH COURT OF JHARKHAND AT RANCHI
E.P. NO.5 OF 2015

Ganesh Mahali Petitioners
Versus
Champai Soren & Ors. Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Arvind Kr. Lall, Advocate

For Respondent No.1 : Mr. Bibhash Sinha, Advocate
Mr. A.K. Sah, Advocate
For Respondent No.14 : Dr. Ashok Kr. Singh, Advocate

Order No.82 Dated-20.12.2021

I.A. No.1941 of 2020

Heard the parties.

Learned counsel for the respondents submits that this interlocutory application has been filed by the respondent with a prayer to dismiss the election petition as the same has become infructuous by efflux of time as the term of the 4th Jharkhand State Legislative Assembly has expired and the said assembly stands dissolved and consequent thereupon fresh election has already held on the basis of Adult Franchise and 5th Jharkhand State Legislative Assembly has been constituted through General Election (Jharkhand State Assembly Election-2019).

It is further submitted by the learned counsel for the respondents that this election petition has been filed challenging the election of the respondents with following reliefs:-

- "(A) The Election of the respondent no. 1 from 51, Saraikela (S.T.) Assembly Constituency for Jharkhand State Assembly 2014 be declared void and set aside after recounting of the ballots through EVM machines and on such recounting if the petitioner be found to have secured highest votes then he be declared to be duly elected.
- (B) Any other or further relief(s) which the petitioner may be entitled to
- (C) Cost."

It is next submitted that by the learned counsel for the respondents that there is no allegation of any "corrupt practice" as provided under Section 83 (1) (c) of the Representation

of People Act, 1951, in this Election Petition. It is further submitted that it is mandatory requirement of law that if any Election Petition is filed involving the question of corrupt practice under Section 83 (1) (c) of the Representation of People Act, 1951 then the same must be accompanied with Form 25 as prescribed under Rule 94A of the Conduct of Election Rules, 1961 and the fact that such Form No.25 has not been filed in this case goes to show that there is no allegation of any corrupt practice. It is next submitted that this election petition has been filed on the ground that there was mistake in calculation of vote hence, the election of respondent no.1 be declared void. It is then submitted that the life of 4th Jharkhand State Legislative Assembly has already been expired and thereupon, the Governor of Jharkhand had called upon to constitute the 5th Jharkhand State Legislative Assembly through General Election (Jharkhand State Assembly Election-2019) on the basis of adult franchise. It is also submitted that entire exercise of 5th General Election has also been completed and a new assembly is in session w.e.f. 23.12.2019. It is then submitted that even if the prayer of the instant election petition is allowed, the petitioner cannot take the seat in the 4th Jharkhand State Legislative Assembly as because the life of the said Assembly has already been expired and the same has already been dissolved. It is further submitted that even if the petition is allowed, the petitioner cannot take the oath in terms of Article 188 of Constitution of India for becoming the member of 4th Jharkhand State Legislative Assembly. It is also submitted that no live issue remains to be adjudicated. It is further submitted that it is a settled principle of law that the Court should not undertake to decide an issue unless it is living issues between the parties. In support of its contention, learned counsel for the respondents relied upon the judgment of Hon'ble Supreme Court of India in the case of Kashi Nath Mishra vs. Vikramaditya Pandey & Ors. Reported in (1998) 8 SCC 735, paragraph no.1 of which reads as under:-

"1. This appeal arises from Election Petition No. 4 of 1991 filed under Section 81 of the Representation of the People Act, 1951. The appellant had challenged the election of the second respondent to the U.P. Legislative Assembly from the 227 Ballia Assembly Constituency in District Ballia. The election petition was dismissed. The term of the Assembly has expired by efflux of time; thereafter, another election has been held and another Assembly constituted."

Learned counsel for the respondents further relied upon the judgment of Hon'ble Supreme Court of India in the case of Podipireddy Atchuta Desai vs. Chinnam Joga Rao & Ors. Reported in 1987 (Supp) SCC 42, the same reads as under:-

"The questions raised in this election appeal are of some importance. We also see the force of the submissions urged on behalf of the appellant. All the same, having regard to the fact that fresh elections have already taken place and the

appeal has become redundant in that sense, we will be undertaking a futile exercise if we examine the validity or otherwise of the view taken by the High Court in dismissing the election petition. Under the circumstances without expressing any view, one way or the other, on the validity or otherwise of the decision of the High court, we direct that this appeal shall stand disposed of with no order as to costs."

Learned counsel for the respondents further relied upon the judgment of Hon'ble Supreme Court of India in the case of Mundrika Singh Yadav vs. Shiv Bachan Yadav & Ors. Reported in (2005) 12 SC 211, paragraph no.1 of which reads as under:-

"1. An election petition under Sections 80 and 80-A of the Representation of the People Act, 1951 filed by the appellant was dismissed by the High Court. A perusal of the judgment of the High Court shows that the appellant had sought for the relief of re-count of ballot papers. The High Court on trial found a case in that regard having not been made out. The election to the Bihar State Legislative Assembly forming subject-matter of the election petition was held in the year 2000. The term of the Legislative Assembly is over. Fresh elections are being held. No relief can be allowed to the appellant in this appeal even if this appeal is allowed. The appeal is rendered infructuous and is dismissed accordingly."

Hence, it is submitted that this Election Petition be dismissed as being infructuous by efflux of time.

Learned counsel for the petitioner submits that the petitioner does not want to file counter reply in this case and he fairly submits that there is no allegation of any corrupt practice in this petition.

Considering the facts of the case and the settled principle of law, this Court is of the considered view that this election petition has become infructuous. Accordingly, this Election Petition is dismissed being infructuous.

The interlocutory application is allowed accordingly.

E.P.No.5 of 2015

In view of the dismissal of this Election Petition, all the interlocutory applications are disposed of being infructuous.

Anil Kumar Choudhary, J.,

ELECTION COMMISSION OF INDIA

NOTIFICATION

18th January, 2022 / 28 Pausa, 1943 (Saka)

No. 82/JKD-LA/(05/2015)--2022 : In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publish Order dated the 20th December, 2021 of the High Court of Jharkhand, Ranchi, in Election Petition No. 05 of 2015.

By order,

ARVIND ANAND,
PRINCIPAL SECRETARY
ELECTION COMMISSION OF INDIA

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It is further submitted by the learned counsel for the respondents that this election petition has been filed challenging the election of the respondents with following reliefs:-

- (A) The Election of the respondent no. 1 from 51, Saraikela (S.T.) Assembly Constituency for Jharkhand State Assembly 2014 be declared void and set aside after recounting of the ballots through EVM machines and on such recounting if the petitioner be found to have secured highest votes then he be declared to be duly elected.
- (B) Any other or further relief(s) which the petitioner may be entitled to
- (C) Cost."

It is next submitted that by the learned counsel for the respondents that there is no allegation of any "corrupt practice" as provided under Section 83 (1) (c) of the Representation of People Act, 1951, in this Election Petition. It is further submitted that it is mandatory requirement of law that if any Election Petition is filed involving the question of corrupt practice under Section 83 (1) (c) of the Representation of People Act, 1951 then the same must be accompanied with Form 25 as prescribed under Rule 94A of the Conduct of Election Rules, 1961 and the fact that such Form No.25 has not been filed in this case goes to show that there is no allegation of any corrupt practice. It is next submitted that this election petition has been filed on the ground that there was mistake in calculation of vote hence, the election of respondent no.1 be declared void. It is then submitted that the life of 4th Jharkhand State Legislative Assembly has already been expired and thereupon, the Governor of Jharkhand had called upon to constitute the 5th Jharkhand State Legislative Assembly through General Election (Jharkhand State Assembly Election-2019) on the basis of adult franchise. It is also submitted that entire exercise of 5th General Election has also been completed and a new assembly is in session w.e.f. 23.12.2019. It is then submitted that even if the prayer of the instant election petition is allowed, the petitioner cannot take the seat in the 4th Jharkhand State Legislative Assembly as because the life of the said Assembly has already been expired and the same has already been dissolved. It is further submitted that even if the petition is allowed, the petitioner cannot take the oath in terms of Article 188 of Constitution of India for becoming the member of 4th Jharkhand State Legislative Assembly. It is also submitted that no live issue remains to be adjudicated. It is further submitted that it is a settled principle of law that the Court should not undertake to decide an issue unless it is living issues between the parties. In support of its contention, learned counsel for the respondents relied upon the judgment of Hon'ble Supreme Court of India in the case of Kashi Nath Mishra vs. Vikramaditya Pandey & Ors. Reported in (1998) 8 SCC 735, paragraph no.1 of which reads as under:-

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decision of the High court, we direct that this appeal shall stand disposed of with no order as to costs."

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Anil Kumar Choudhary, J.,
